

OPINION
54-44

December 13, 1954 (OPINION)

COURTS

RE: Police Magistrate, Change of Venue

In your letter of December 6, 1954, you have requested our opinion as to the question of a change of venue from a police magistrate's court. The facts set forth in your letter are, briefly, as follows: A man was arrested on a charge of driving an automobile while under the influence of intoxicating liquor and has asked for a change of venue from your court, and the city of Mandan has no city justice of the peace.

Section 40-1801 of the North Dakota Revised Code of 1943 provides that the police magistrate shall have exclusive jurisdiction over all offenses committed against the ordinances of a city. Section 40-1803 provides that the city justice of the peace shall act as police magistrate ". . . . During temporary absence, interest, or disability of the police magistrate. . . ."

Therefore, in view of the fact that the police magistrate has exclusive jurisdiction over offenses against city ordinances, except in instances covered by section 40-1803, it is our opinion that when a city has no city justice of the peace it is impossible for the police magistrate to grant a change of venue in a case charging the defendant with violation of a city ordinance.

We trust the above sufficiently answers your question.

LESLIE R. BURGUM

Attorney General